

103D CONGRESS
1ST SESSION

S. 443

To amend the Solid Waste Disposal Act and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to make improvements in capacity planning processes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25 (legislative day, JANUARY 5), 1993

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Solid Waste Disposal Act and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to make improvements in capacity planning processes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Hazardous Waste Facilities Siting Act of 1993”.

6 (b) FINDINGS.—Congress finds the following:

1 (1) Local communities and the public must
2 have a greater voice in the process of siting hazard-
3 ous waste treatment facilities.

4 (2) Each State should have the right to pre-
5 serve some hazardous waste management capacity
6 solely for use by the State.

7 (3) Each State must be authorized to impose
8 differential fees as a method of promoting equities
9 amongst the States.

10 (4) The role of the Environmental Protection
11 Agency must be expanded to increase the focus of
12 the agency with respect to partnerships with indus-
13 tries to identify technologies that foster pollution
14 prevention and support waste exchange marketing
15 efforts on behalf of industries.

16 (5) Industries would demonstrate a commit-
17 ment to pollution prevention by expanding voluntary
18 goals and achieving optimum waste reduction with-
19 out compromising trade secrets or risking an in-
20 crease in the level of foreign imports through the
21 banning of certain chemicals.

22 (6) The capacity assurance planning data gath-
23 ering process required under the Comprehensive En-
24 vironmental Response, Compensation, and Liability
25 Act of 1980 (42 U.S.C. 9601 et seq.) must be im-

1 proved to standardize the format, improve the credi-
2 bility of data, and reduce excess expenditures by the
3 Federal Government and the States in the collection
4 of the data.

5 **SEC. 2. SOLID WASTE DISPOSAL ACT FINDINGS.**

6 Section 1002(b) of the Solid Waste Disposal Act (42
7 U.S.C. 6901(b)) is amended—

8 (1) by striking “and” at the end of paragraph
9 (7);

10 (2) by striking the period at the end of para-
11 graph (8) and inserting “; and”; and

12 (3) by adding at the end the following new
13 paragraphs:

14 “(9) the United States continues to generate
15 substantial and increasing volumes of both hazard-
16 ous and solid waste each year, and if the wastes are
17 not properly managed, the wastes may pose a threat
18 to human health and the environment;

19 “(10) as of the date of enactment of this para-
20 graph, new hazardous waste management facilities
21 are not being sited and many industries are manag-
22 ing waste in existing facilities without the best avail-
23 able environmental controls, or are engaged in long-
24 distance transportation of wastes to other manage-
25 ment and disposal facilities in other States;

1 “(11) the capacity assurance planning process
2 under section 104(c)(9) of the Comprehensive Envi-
3 ronmental Response, Compensation, and Liability
4 Act of 1980 (42 U.S.C. 9604(c)(9)) and data gath-
5 ered pursuant to the process are flawed or inconsis-
6 ent in many areas;

7 “(12) as of the date of enactment of this para-
8 graph, the Administrator is not able to ascertain, on
9 the basis of the data described in paragraph (11),
10 whether or not the United States has adequate ca-
11 pacity to meet hazardous waste treatment and dis-
12 posal needs over the 20-year period beginning on the
13 date of enactment of this paragraph; and

14 “(13) the capacity assurance data gathering
15 process must be improved to standardize and
16 streamline the efforts of the States and improve the
17 credibility of the data so that the public may be as-
18 sured of the actual need to site more hazardous
19 waste management facilities.”.

20 **SEC. 3. PUBLIC PARTICIPATION AND OBLIGATIONS OF**
21 **OWNER OR OPERATOR.**

22 (a) IN GENERAL.—Section 3005(b) of the Solid
23 Waste Disposal Act (42 U.S.C. 6925(b)) is amended—

24 (1) by redesignating paragraphs (1) and (2) as
25 subparagraphs (A) and (B), respectively;

1 (2) by striking “Each” and inserting “(1)
2 Each”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(2)(A) Each application for a permit submit-
6 ted by a person who plans to construct a new facility
7 for the treatment, storage, or disposal of hazardous
8 waste identified or listed under this subtitle shall, in
9 addition to containing the information required
10 under paragraph (1), contain written assurances
11 that the following procedures have been carried out:

12 “(i) The applicant published an announce-
13 ment of the intent to apply for a permit to site
14 a hazardous waste disposal facility in a news-
15 paper of general circulation not later than 90
16 days before the filing of the application and
17 also published the announcement 7 days after
18 the date of the initial publication.

19 “(ii) The applicant published an announce-
20 ment of any purchase or intent to purchase
21 property, specifying the location of the property
22 in a newspaper of general circulation not later
23 than 90 days before the filing of an application
24 for State approval to site a hazardous waste
25 disposal facility.

1 “(iii) The applicant requested the Adminis-
2 trator (or the appropriate official of the State)
3 to establish an advisory committee pursuant to
4 subparagraph (B).

5 “(iv) The applicant submitted to the Ad-
6 ministrator (or the State) and to the appro-
7 priate official of the host community a prospec-
8 tus that detailed the criteria for the selection of
9 a site, and the nature of the planned facility.

10 “(v) The applicant submitted to the Ad-
11 ministrator (or the State) and the host commu-
12 nity advisory committee, no later than 30 days
13 prior to the public hearing described in clause
14 (vi), a compliance history that—

15 “(I) had been certified as complete by
16 the Administrator, for all related partners
17 and parent subsidiaries of the applicant;
18 and

19 “(II) included the primary documents
20 concerning the number of notices of viola-
21 tions of the applicant (if any) and the na-
22 ture and description of the violations.

23 “(vi) The host community advisory com-
24 mittee conducted at least one public meeting
25 and one public hearing on the planned facility,

1 and the applicant paid the expenses associated
2 with the hearing (as determined by the Admin-
3 istrator).

4 “(vii) The applicant submitted to the Ad-
5 ministrator (or to the State) a detailed analysis
6 and reporting of—

7 “(I) the area in which the applicant
8 proposed to site the facility;

9 “(II) the process by which the area
10 was selected;

11 “(III) a description of the tech-
12 nologies to be used at the site;

13 “(IV) a comprehensive treatment
14 analysis; and

15 “(V) the annual capacity of the facil-
16 ity and, if the applicant intends to receive
17 waste from out-of-State, the quantities of
18 out-of-State waste the applicant intends to
19 receive.

20 “(viii) The applicant submitted to the Ad-
21 ministrator (or to the State) written certifi-
22 cation of a finding by the State that the re-
23 quirements under State law concerning the ne-
24 cessity for hazardous waste treatment, storage,

1 or disposal in the State require the siting of ad-
2 ditional hazardous waste disposal facilities.

3 “(ix) Upon completion of the procedures
4 described in clauses (i) through (viii), the appli-
5 cant requested the appropriate official of the
6 host community for written consent to site the
7 facility in the host community.

8 “(B) Upon request by an applicant, the Admin-
9 istrator (or the appropriate official of the State)
10 shall establish a host community advisory committee.
11 Members of the committee shall be nominated by an
12 appropriate official of the host community (as deter-
13 mined by the Administrator or the State) residents
14 of the host community and shall be appointed by the
15 Administrator (or the appropriate officials of the
16 State) of which—

17 “(i) one member shall be a representative
18 of health professionals;

19 “(ii) one member shall be a local elected
20 official (or a representative of the official);

21 “(iii) one member shall be a local elected
22 official of a county (or equivalent political sub-
23 division of a State);

1 “(iv) one member shall be a local elected
2 official of a township (or equivalent political
3 subdivision of a State);

4 “(v) one member shall be a representative
5 of the local chamber of commerce (if any);

6 “(vi) one member shall be a representative
7 of local consumer groups;

8 “(vii) one member shall be a representative
9 of a local environmental organization;

10 “(viii) one member shall be a member of a
11 local emergency response planning committee
12 (as described in section 301 of the Emergency
13 Planning and Community Right-To-Know Act
14 of 1986 (42 U.S.C. 11001)); and

15 “(ix) one member shall be a representative
16 of the general public.

17 “(C) Each application for a permit submitted
18 by a person who plans to construct a new facility for
19 the treatment, storage, or disposal of hazardous
20 waste identified or listed under this subtitle shall, in
21 addition to containing the information required
22 under subparagraph (A), contain a statement by the
23 appropriate official of the host community concern-
24 ing whether or not the written consent described in
25 subparagraph (A)(ix) was issued.

1 “(D) Each application for a permit submitted
2 by a person who plans to construct a new facility for
3 the treatment, storage, or disposal of hazardous
4 waste identified or listed under this subtitle shall, in
5 addition to containing the information required
6 under paragraph (1), contain written assurances
7 that, at the same time as the Administrator (or the
8 State) established a host community advisory com-
9 mittee described in subparagraph (A), the State pro-
10 vided the host community advisory committee with
11 an assistance grant described in subparagraph (E)
12 in an amount not less than \$100,000, and that the
13 State will provide additional grants in an amount
14 not less than \$100,000 every 12 months thereafter,
15 until such time as a final decision is made concern-
16 ing the permit application.

17 “(E)(i) The Administrator shall establish a host
18 community advisory committee assistance grant pro-
19 gram to provide assistance to the committees estab-
20 lished under subparagraph (B).

21 “(ii) Subject to the availability of appropria-
22 tions, the Administrator shall award a grant to each
23 State with an approved plan under this title. A State
24 shall award grants to host community advisory com-
25 mittees. If a State does not have an approved plan

1 under this title, the Administrator shall award
2 grants to host community advisory committees in
3 the State.

4 “(iii) The amount of any grant awarded to a
5 host community under this subparagraph shall be
6 not less than \$100,000.

7 “(iv) A grant to a host community shall be
8 awarded by the Administrator or the State for a fis-
9 cal year (as determined by the State). Subsequent
10 grants may be awarded to a host community advi-
11 sory committee until such time as a final decision is
12 made concerning the permit application.

13 “(F) There are authorized to be appropriated to
14 the Environmental Protection Agency such sums as
15 may be necessary to carry out the grant program
16 under subparagraph (E).

17 “(G) For the purposes of this paragraph, the
18 term ‘host community’ means the political subdivi-
19 sion of a State in which the facility for the treat-
20 ment, storage, or disposal of hazardous waste is pro-
21 posed to be located.”.

22 (b) PERMIT ISSUANCE.—Section 3005(c) of the Solid
23 Waste Disposal Act (42 U.S.C. 6925(c)) is amended by
24 adding at the end the following new paragraphs:

1 “(4) Prior to issuing a permit under this sec-
2 tion for new hazardous waste disposal facilities or
3 for any such facility which has not received an oper-
4 ating permit as of January 1, 1993, for the treat-
5 ment, storage, or disposal of hazardous waste, the
6 Administrator (or the State) must receive written
7 assurances from the applicant that the procedures
8 described in subsection (b)(2) have been completed.
9 The assurances shall include a notarized statement
10 from the host community advisory committee that
11 the written assurances are accurate, and the assur-
12 ances shall include a notarized statement from the
13 host community advisory committee that the state-
14 ment of the applicant is accurate.

15 “(5) Prior to issuing any permit under this sec-
16 tion, the Administrator shall determine whether a
17 facility would conform with applicable capacity as-
18 surance plans submitted to the Administrator in ac-
19 cordance with section 104(c)(9) of the Comprehen-
20 sive Environmental Response, Compensation, and
21 Liability Act of 1980 (42 U.S.C. 9604(c)(9)), in-
22 cluding whether the proposed facility could cause the
23 State to exceed the capacity needs of the State.

24 “(6) In issuing any permit under this section
25 for a new facility for the treatment, storage, or dis-

1 disposal of hazardous waste, the Administrator (or the
2 State) shall give priority to each owner or operator
3 who has received written consent of a host commu-
4 nity pursuant to this title.

5 “(7) If the Administrator determines, pursuant
6 to paragraph (5), that a facility could cause the
7 State to exceed the capacity needs of the State, no
8 permit shall be issued under this section, unless the
9 Administrator determines that the State cannot ful-
10 fill the capacity requirements of the State under ap-
11 plicable capacity assurance plans submitted to the
12 Administrator in accordance with section 104(c)(9)
13 of the Comprehensive Environmental Response,
14 Compensation, and Liability Act of 1980 (42 U.S.C.
15 9604(c)(9)).

16 “(8) Any permit issued under this section for a
17 facility described in paragraph (4) shall be subject to
18 the condition that, with respect to hazardous waste
19 generated outside of the State in which the facility
20 is located, the facility may not treat, store, or dis-
21 pose of the hazardous waste unless the owner or op-
22 erator of the facility enters into an agreement with
23 the appropriate official of the host community (as
24 determined by the Administrator or the State) that
25 authorizes the treatment, storage, or disposal.”.

1 (c) AUTHORIZED STATE HAZARDOUS WASTE PRO-
 2 GRAMS.—Section 3006(b) of the Solid Waste Disposal Act
 3 (42 U.S.C. 6926(b)) is amended by adding at the end the
 4 following new sentence: “The Administrator shall not au-
 5 thorize a State program under this section unless the
 6 State program provides for appropriate mechanisms for
 7 the appointment of host community committees and re-
 8 view procedures to enable an applicant to carry out the
 9 requirements under section 3005(b)(2).”.

10 (d) REGULATIONS.—The Administrator of the Envi-
 11 ronmental Protection Agency (hereafter in this Act re-
 12 ferred to as the “Administrator”) shall promulgate such
 13 regulations as are necessary to carry out the amendments
 14 made by this section. The regulations shall include appro-
 15 priate safeguards and procedures to ensure that an appli-
 16 cant is able to carry out the review procedure described
 17 in section 3005(b)(2) of the Solid Waste Disposal Act, as
 18 added by subsection (a).

19 **SEC. 4. CAPACITY ASSURANCE PLANNING DATA.**

20 Section 104(c)(9) of the Comprehensive Environ-
 21 mental Response, Compensation, and Liability Act of
 22 1980 (42 U.S.C. 9604(c)(9)) is amended—

23 (1) by redesignating subparagraphs (A) through
 24 (D) as clauses (i) through (iv), respectively;

1 (2) by striking “Effective” and inserting “(A)
2 Effective”;

3 (3) by inserting after “deemed adequate by the
4 President that the State will” the following: “meet
5 the requirements of subparagraph (B) and will”;

6 (4) by adding at the end of the paragraph the
7 following subparagraph:

8 “(B)(i) Not later than 180 days after the date of en-
9 actment of this subparagraph, the Administrator shall es-
10 tablish guidelines for the biennial gathering of capacity as-
11 surance reporting data required to be submitted pursuant
12 to this paragraph.

13 “(ii) Not later than 180 days after the date of enact-
14 ment of this subparagraph, the Administrator shall pro-
15 mulgate regulations that require, as part of the capacity
16 assurances under subparagraph (A) for any State that,
17 in the most recent capacity assurance plan submitted pur-
18 suant to this paragraph, documented a capacity shortfall
19 in the State in a quantity in excess of 50,000 tons per
20 year, or that is a net exporter of hazardous waste, the
21 detailed and comprehensive reporting information de-
22 scribed in subparagraph (C).

23 “(C) Not later than 180 days after the date of enact-
24 ment of this subparagraph, the Administrator shall pre-
25 scribe regulations that require that the capacity assur-

1 ances under this paragraph include (in accordance with
2 guidelines that the Administrator shall prescribe by regu-
3 lation) the following information in a standardized format:

4 “(i) Assurances that the State uses the most
5 appropriate measures of hazardous waste classifica-
6 tion for generation and management (as determined
7 by the Administrator by regulation).

8 “(ii) The specification of quantitative measures
9 used to measure waste characteristics.

10 “(iii) An indication that wastes treated or dis-
11 posed of at on-site facilities and wastes treated or
12 disposed of at off-site facilities shall be considered as
13 part of the same tracking and planning process.

14 “(D) A State that fails to meet the applicable require-
15 ments of this paragraph shall be subject to a civil penalty
16 that shall be assessed under applicable procedures of this
17 Act. The Administrator shall, by regulation, establish
18 guidelines for the assessment of a civil penalty under this
19 paragraph, including a maximum amount for the civil pen-
20 alty.”.

21 (2) ENFORCEMENT GUIDELINES.—The guide-
22 lines established under paragraph (1) shall provide
23 for a tiered system of penalty assessment that pro-
24 vides for a reduction in the amount of a penalty for
25 a de minimus deviation from a capacity requirement.

1 **SEC. 5. MISCELLANEOUS PROVISIONS.**

2 (a) GUIDELINES FOR THE RELEASE OF INFORMA-
3 TION.—Not later than December 31, 1993, the Adminis-
4 trator shall, by regulation, establish guidelines for the in-
5 clusion of toxic chemical release information required to
6 be submitted under section 313 of the Emergency Plan-
7 ning and Community Right-To-Know Act of 1986 (42
8 U.S.C. 11023) in the capacity assurance data required to
9 be submitted under section 104(c)(9) of the Comprehen-
10 sive Environmental Response, Compensation and Liability
11 Act of 1980 (42 U.S.C. 9604(c)(9)) for December 1994,
12 and every 2 years thereafter.

13 (b) COMMENT PERIOD.—In promulgating regulations
14 under subparagraphs (B) and (C) of section 104(c)(9) of
15 the Comprehensive Environmental Response, Compensa-
16 tion, and Liability Act of 1980 (as added by section 4 of
17 this Act) and under this section, the Administrator shall
18 provide a 12-month period for public comment after the
19 publication of a proposed regulation before promulgating
20 a final regulation.

21 (c) MODEL CAPACITY ASSURANCE PLAN.—To assist
22 States in meeting the requirements for capacity assurance
23 plans issued under section 104(c)(9) of the Comprehensive
24 Environmental Response, Compensation, and Liability Act
25 of 1980 (42 U.S.C. 9604(c)(9)), the Administrator shall
26 develop and publish a comprehensive model capacity as-

1 surance plan to assist States in complying with the data
2 gathering process required to prepare a capacity assurance
3 plan, the schedules required to be included in a plan, and
4 other requirements related to the use of resources.

5 (d) STATEMENT BY THE ADMINISTRATOR.—Not
6 later than 180 days after the date of enactment of this
7 Act, the Administrator shall publish in the Federal Reg-
8 ister a statement concerning whether the United States
9 has adequate capacity to treat and dispose of hazardous
10 waste (as listed pursuant to section 3001 of the Solid
11 Waste Disposal Act (42 U.S.C. 6921) during the 20-year
12 period following the publication of the statement. The Ad-
13 ministrator shall include a summary of the flow of waste
14 between States and the level of capacity of each State to
15 treat, store, or dispose of hazardous waste within the
16 State.

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